

## **Statutes and Regulations Governing Appeals and Requests for Summary Review**

### **Education Code § 41344** *(As amended through Statutes of 2005.)*

(a) If, as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception or to pay a penalty arising from an audit exception, the Superintendent and the Director of Finance, or their designees, shall jointly establish a plan for repayment of state school funds that the local educational agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments, or for payment of a penalty arising from an audit exception. A local educational agency shall request a plan within 90 days of receiving the final audit report or review, within 30 days of withdrawing or receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of withdrawing or receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local educational agency is notified, the Controller shall also be notified of the plan. The plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed or penalty amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) of this section or subdivision (d) of Section 41344.1 applies, in which case the disallowed or penalty amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating a disallowed amount, the Controller shall determine the total amount of overpayment received by the local educational agency on the basis of average daily attendance, or other data, reported by the local educational agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent and the Director of the Department of Finance concur that repayment of the full liability or payment of the penalty in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a plan of equal annual payments over a period of up to eight years. The plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Superintendent and the Director of the Department of Finance shall jointly establish this plan. The Controller shall withhold amounts pursuant to the plan.

(3) If the Superintendent and the Director of the Department of Finance do not jointly establish a plan, the Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1), or the penalty amount, at the next principal apportionment.

(b)(1) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(2) Commencing with the 1999-2000 fiscal year, this subdivision may not result in a local educational agency repaying more than the value of the average daily attendance disallowed in the audit exception plus interest and other penalties or reductions in apportionments as provided by existing law.

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local educational agency receives a final audit report resulting from an audit or review of all or any part of the operations of the local educational agency, or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1, a local educational agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local educational agency may present evidence or arguments if the local educational agency believes that the final report contains any finding that was based on errors of fact or interpretation of law, or if the local educational agency believes in good faith that it was in substantial compliance with all legal requirements. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local educational agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, "audit or review" means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accounting firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local educational agency with an opportunity to provide a written response.

**Education Code § 41344.1** (*As amended through Statutes of 2005.*)

(a) The Education Audit Appeals Panel is hereby established as a separate state agency. Its membership shall consist of the Superintendent, the Director of the Department of Finance, and the Chief Executive Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 or their designees. The panel shall have the authority to expend funds, hire staff, make contracts, sue and be sued, and issue regulations in furtherance of its duties.

(b) The panel shall hear appeals filed pursuant to subdivision (d) of Section 41344. The Controller shall be a party to all appeals. The department and the Department of Finance may, at their election, timely intervene as a party in any appeal. The panel shall consider audit appeals pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that it may adopt regulations specifying special pleadings that shall govern audit appeals. The panel may approve settlements and make findings of fact and interpretations of law.

(c) Compliance with all legal requirements is a condition to the state's obligation to make apportionments. A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. "Substantial compliance" means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The panel may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both. If the panel finds there has been substantial compliance, the panel may waive or reduce the reimbursement or penalty amount and may also order other remedial measures sufficient to induce full compliance in the future. Other remedial

measures may include restoration of a reduction or penalty amount if full compliance is not rendered in the future, ordering special audits, and requiring special training.

(d) In addition to the normal appeal process specified above, there is hereby created a voluntary, informal, summary appeals process for noncompliant audit exceptions that clearly constitute substantial compliance as that term is defined in subdivision (c). Requests for summary review shall be made to the executive officer of the panel who may seek comment from the Department of Finance or Superintendent. Summary review shall be sought within 30 days of the date on which a local educational agency receives a final audit report resulting from an audit or review.

(1) If the executive officer concludes the conditions for finding substantial compliance are not clearly met or involve substantial questions of fact, the executive officer may deny the request for summary review and the appellant may pursue its claim through the normal appeal process.

(2) For appeals in which the total audit exceptions for full repayment or penalty constitute less than 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is less, the executive officer may waive or reduce the reimbursement or penalty upon a finding of substantial compliance and that other remedial measures are sufficient to induce full compliance in the future.

(3) For appeals in which the total audit exceptions for full repayment or penalty meet or exceed 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is greater, the executive officer may waive or reduce the reimbursement or penalty upon a finding of substantial compliance and order other remedial measures that are sufficient to induce full compliance in the future, if he or she has the written approval of the Department of Finance and the Superintendent. The executive officer shall provide the details of the proposed settlement and the rationale in writing to the Department of Finance and Superintendent and allow at least 30 days for their review.

(4) The right to appeal pursuant to subdivision (d) of Section 41344 is independent of this subdivision and an appellant may pursue his or her appeal under subdivision (b) regardless of the result under this subdivision. A local educational agency that has unresolved audit appeals pursuant to subdivision (d) of Section 41344 pending on January 1, 2003, may file a request for summary review under this subdivision for a period of 60 days after January 1, 2003.

**California Code of Regulations**  
**Title 5. Education**  
**Division 1.5. Education Audit Appeals Panel**  
**Chapter 1. General Provisions**

**§ 19800. Definitions.**

The following definitions shall apply to these regulations:

(a) “Final audit report” means:

(1) for an annual audit conducted pursuant to Education Code Section 41020, the report that has been accepted by the Controller pursuant to Education Code Section 14504, and

(2) for any other audit or review conducted by or for a governmental agency that includes one or more apportionment significant exceptions requiring repayment, the report issued following an opportunity to provide a written response to a draft report;

(b) “Panel” means the Education Audit Appeals Panel.

(c) “Parties to the appeal” means the local education agency that is pursuing an appeal to the Panel, the Controller, and any applicant(s) allowed to intervene pursuant to Government Code Section 11440.50.

(d) “Summary review” means the voluntary, informal, summary appeals process set forth in Education Code Section 41344.1(d).

**Chapter 2. Summary Review; Appeals**

**§ 19803. Request for Summary Review Filing; Form of Request for Summary Review; Withdrawal of Request for Summary Review.**

(a) To request summary review, a local education agency shall, within 30 days of receipt of the final audit report, file a written Request for Summary Review with the Executive Officer of the Panel and shall:

(1) identify each finding for which summary review is requested; and

(2) set forth the basis for the local education agency’s claim, as to each disputed finding, that it was in substantial compliance, as set forth in Education Code Section 41344.1(c).

(b) A local education agency may withdraw a Request for Summary Review at any time prior to issuance of a determination by notifying the Executive Officer of the Panel in writing.

**§ 19804. Appeal Filing; Form of Notice of Appeal; Withdrawal of Appeal.**

(a) To present an appeal to the Panel, a local education agency shall, within 60 days of receipt of the final audit report or within 30 days of receipt of the determination of a summary review, file a written Notice of Appeal with the Executive Officer of the Panel, identifying each finding being appealed:

(b) A local education agency may withdraw an appeal at any time prior to issuance of a decision by the Panel. The local education agency shall give prompt written notice of the withdrawal:

- (1) to the Executive Officer of the Panel,
- (2) if the appeal is pending before the Office of Administrative Hearings,
  - (A) to the administrative law judge assigned responsibility for the matter, or
  - (B) if the matter has not been assigned to a particular administrative law judge, to the Director of the Office of Administrative Hearings, and
- (3) to all parties to the appeal.

**§ 19805. Intervention.**

Government Code Section 11440.50, concerning intervention, grant of motion, and conditions, shall apply to appeal proceedings of the Panel.

(EAAP Regulations operative 5-10-2004.)